

**THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

MICHAEL POSTAWKO,)
)
)
Plaintiff,))
)
)
v.) Case No. 15-4281-CV-C-NKL
)
)
GEORGE LOMBARDI, et al.,)
)
)
Defendants.)

MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF

Michael S. Foster, Phillip J. R. Zeeck, and Catherine A. Zollicker (“Counsel”), Counsel for Plaintiff Michael Postawko, hereby request to withdraw as attorneys in this matter under Local Rule 83.2. In support of said withdrawal, Counsel states:

1. Plaintiff filed his Complaint on November 18, 2015, asserting Eighth Amendment claims arising from Defendants’ failure to keep him from exposure to secondhand tobacco smoke.
2. Plaintiff’s Complaint seeks damages and injunctive relief that would limit his exposure to secondhand smoke.
3. From November 2015 to May 2017, Plaintiff represented himself *pro se*.
4. In May 2017, this Court assigned Counsel to represent Plaintiff.
5. Shortly after Counsel entered their appearances, the Department of Corrections moved Plaintiff to a different facility, and it took nearly two months for Counsel and Plaintiff to discuss this case.
6. After contacting Plaintiff and discussing his case, Counsel entered into negotiations with Defendants to obtain the injunctive relief Plaintiff’s Complaint seeks.

7. Counsel's negotiations were successful; Defendants have agreed to amend the Department of Corrections' smoking policy to prohibit smoking in all Department of Corrections facilities.

8. Defendants have also agreed to provide smoking cessation classes to offenders and corrections officers, medication to assist offenders in quitting smoking, and other measures to eliminate Plaintiff's exposure to secondhand smoke.

9. Despite this success, Plaintiff is no longer willing to speak about his case by telephone with Counsel because he believes Defendants or their representatives surreptitiously listen to his telephone conversations.

10. Although Plaintiff is willing to engage in written correspondence, this form of communication results in significant delays. To exasperate this issue, unanswered questions take twice as long to obtain a response. While waiting for Plaintiff's input, Counsel is unable to actively pursue certain courses of action, which significantly hinders Counsel's ability to represent Plaintiff's interests in a timely manner.

11. The only effective mode for communicating with Plaintiff, therefore, is in-person meetings.

12. Counsel resides and offices nearly five hours' drive from the facility in which Plaintiff is incarcerated.

13. For these reasons, Counsel's ability to zealously represent Plaintiff's interests has been hindered.

14. In addition, Plaintiff and Counsel have a fundamental disagreement as to the strategy of Plaintiff's case.

15. Plaintiff will not be prejudiced by Counsel's request to withdraw because the discovery period was previously closed when Counsel entered their appearance.

16. Furthermore, after Counsel entered their appearance, a stay was entered as the parties attempted to settle this matter in its entirety. (Dkt. No. 155)

17. On September 29, 2017, an Amended Scheduling Order was entered allowing Plaintiff additional time for discovery, which was previously closed when Counsel entered their appearance. (Dkt. No. 162)

18. For all these reasons, Plaintiff therefore would not be prejudiced by Counsel's withdrawal.

WHEREFORE, Counsel requests that this Court permit Counsel to withdraw as attorneys in this matter under Local Rule 83.2.

Respectfully submitted,

/s/ Michael S. Foster

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2017, I electronically filed the above and foregoing pleading with the Clerk of the Court by using the Missouri Courts eFiling System, through which opposing counsel will be served, and that a true and correct copy of the above and foregoing pleading was served by U.S. Mail, postage prepaid to:

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Plaintiff

/s/ Michael S. Foster
Attorney for Plaintiff